



August 22, 2002

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
2014 Main, Rom 501
Dallas, Texas 75201

OR2002-4680

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167551.

The City of Dallas Police Department (the "department") received a request for "offense and arrest reports [related to three named addresses] for the past five years." You indicate that you have released some of the requested information to the requestor. You claim, however, that other portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.¹ Criminal history record information ("CHRI") obtained from the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. §20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.") and (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

would not be eligible to receive the information itself."). Section 411.083 of the Government Code provides that any CHRI maintained by the Texas Department of Public Safety (the "DPS") is confidential. *See* Gov't Code §411.083(a); *see also id.* §§ 411.106(b), .082(2) (defining criminal history record information). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *See id.* §411.084; *see also id.* §411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). We have marked the information you must withhold under section 552.101 in conjunction with chapter 411 of the Government Code.

Next, you marked some of the submitted information as excepted under section 552.101 in conjunction with section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Service report number 0009457 involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, service report number 0009457 is confidential in its entirety pursuant to section 58.007(c) of the Family Code. You must withhold this service report from disclosure under section 552.101 of the Government Code.

You next assert that social security numbers in the submitted information are confidential under section 552.101. A social security number is excepted from required public disclosure under section 552.101 of the Public Information Act (the "Act") in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted

on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any of the social security number information you have marked, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.101 also encompasses the common-law right of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

We believe that some of the information in one of the submitted reports is the type of information made confidential by *Industrial Foundation*. Accordingly, you must withhold the information which we have marked under section 552.101 from the requestor.

You next argue that information in one of the submitted service reports is excepted under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending investigation, and that release of this information to the requestor "could hinder the present investigations and serve as discovery in any subsequent criminal prosecutions." Based upon your representation and our review of the submitted information, we conclude that the public release of the information you have marked in service report 0402791 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement

interests that are present in active cases). Thus, the department may withhold this information from disclosure based on section 552.108(a)(1).

Finally, you argue that some of the submitted information is excepted under section 552.130. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the department must withhold the motor vehicle information you have marked pursuant to section 552.130.

In summary, the department must withhold from disclosure the information we have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The department must withhold the entirety of service report number 0009457 from disclosure based on section 552.101 in conjunction with section 58.007 of the Family Code. Social security numbers in the submitted information may be confidential if they were obtained or are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990. We have marked the information that the department must withhold under section 552.101 in conjunction with common-law privacy. You may withhold the information you have marked under section 552.108. Finally, you must withhold the motor vehicle information you have marked under section 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 167551

Enc: Submitted documents

c: Ms. Tanya Eiserer
The Dallas Morning News
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(w/o enclosures)